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Finlay Carson MSP  
Convener of the Rural Affairs, Islands and Natural  
Environment Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

6 October 2022

Dear Finlay,

## **THE ORGANIC PRODUCTION (AMENDMENT) REGULATIONS (NO. 2) 2022 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The purpose of this statutory instrument (also known as AFC/028) is to extend the dates until which derogations may be authorised for the introduction of non-organic pullets (young chickens) into organic flocks for egg production, the use of up to 5% non-organic protein feed for pigs and poultry, and the use of non-organic high acyl gellan gum in organic food production.

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The derogations relating to pullets and protein feed have been in place since 2008, having been extended several times, and in GB are due to expire on 31 December 2022. However, there is a critical business need to extend these derogations to continue to support businesses, otherwise many organic egg producers and organic food producers will no longer be able to produce organically. This instrument therefore extends these derogations until 1 January 2026.

This instrument provides for similar derogations as those contained in the AG/048 Organic (Derogations) (Amendment) Regulations 2022, with the addition of a derogation in relation to protein feed. Following the Committee's consideration of the AG/048 Regulations, the Deputy Convener, Beatrice Wishart MSP, wrote to me on 25 March 2022 asking for clarification about why the Scottish Government has agreed to the policy approach to source non-organic pullets or gellan gum rather than adopt an alternative approach, which would perhaps be a different route to the rest of the UK.

I apologise for the delay in responding to that letter and will take the opportunity now to set out why the Scottish Government agrees with the policy approach for both AG/048 and AFC/028. As has been set out in previous advice in relation to proposed regulations to fix deficiencies in the organics legislation, the development of policy on organics has been aligned to date between Defra and the devolved administrations.

There are economic and practical benefits to that continuing and the proposed regulations permit a regime on a GB wide basis to address that scenario. The notification sent to the Scottish Parliament in relation to AFC/028 provides the specific detail of why these derogations are being made and I have summarised the main reasons for taking this policy approach below:

- The main issue is that there continues to be shortages of organic pullets, organic protein feed for pigs and poultry and organic gellan gum. These limitations in supply are UK wide so there would be no benefit to Scotland in adopting an alternative approach. If the policy in Scotland was to not extend these derogations then the sector in Scotland would be at a disadvantage as business would no longer be able to produce organically.
- In the case of non-organic pullets the sector has indicated an intention to invest and improve the organic pullet sector but that this will take a minimum of three years. Extending the derogation in relation to non-organic pullets provides the sector with support while these changes are being implemented.
- In the case of non-organic protein feed for pigs and poultry a certain amount of protein is needed to ensure the nutritional requirements of the animals are met and to keep them healthy. Not having the correct level of protein can lead to animal welfare issues. Extending the derogation to use up to 5% of non-organic protein will allow the industry time to research and source alternative proteins. The lack of a sufficient amount of organic grain of a high enough protein level means there is no benefit to Scotland adopting an alternative approach as the same limitations in supply would apply.
- Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2023. Since there are still insufficient sources of organic gellan gum available to producers in Great Britain, this instrument extends that derogation until 1 January 2026. There would be no benefit to Scotland adopting a different approach as the same limitations in supply would apply.
- Defra are planning a comprehensive review of the retained EU organic regulations with a view to developing a new system of GB organic regulations that will address the

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issues around the derogations. The programme will include formal public consultation. They anticipate it will take at least 18 months to deliver, given the breadth of change and need to consult.

To conclude, these derogations are to support the organic sector as there are UK wide shortages of organic pullets, protein feed and gellan gum. There is work underway to e.g. improve the organic pullet sector and undertake research into alternative proteins to use in feed for pigs and poultry. Defra are intending to review the retained EU organic regulations to inform GB organic regulations that will address the issues around the derogations. This will take time and, in the interim, these derogations will allow organic egg producers and organic food producers to continue to produce organically.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 21 November 2022.

Yours sincerely,



**MAIRI GOUGEON**

## SUMMARY NOTIFICATION TO THE SCOTTISH PARLIAMENT

<b>Title of Instrument</b>
The Organic Production (Amendment) (No 2) Regulations 2022.
<b>Proposed laying date at Westminster</b>
Tuesday 6 December 2022.
<b>Date by which Committee has been asked to respond</b>
A response has been requested by 21 November. This will ensure Defra can be notified of the result of the Committee's consideration with enough time to allow the SI to be laid on 6 December.
<b>Power(s) under which SI is to be made</b>
This instrument is being made using the powers conferred by Articles 22(1) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.
<b>Categorisation under SI Protocol</b>
Type 1
<b>Purpose</b>
<p>The purpose of this statutory instrument is to extend the dates until which derogations may be authorised for the introduction of non-organic pullets (young chickens) into organic flocks for egg production, the use of up to 5% non-organic protein feed for pigs and poultry, and the use of non-organic high acyl gellan gum in organic food production.</p> <p>The derogations relating to pullets and protein feed have been in place since 2008, having been extended several times, and in GB are due to expire on 31 December 2022. However, there is a critical business need to extend these derogations to continue to support businesses, otherwise many organic egg producers and organic food producers will no longer be able to produce organically. This instrument therefore extends these derogations until 1 January 2026 and amends the entry in Section A of Annex 8 of Regulation (EC) No 889/2008 relating to E418, gellan gum, to provide that from 1st January 2026 only organically produced gum, in its high acyl form, may be used in processing organic food.</p>
<b>Other information</b>
<b>SG Policy contact:</b>
Tracy McCollin <a href="mailto:tracy.mccollin@gov.scot">tracy.mccollin@gov.scot</a>

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **Name of the SI**

The Organic Production (Amendment) Regulations (No. 2) 2022.

### **Is the notification Type 1 or Type 2**

Type 1

### **A brief overview of the SI (including reserved position)**

This SI (also known as the “AFC/028 Regulations”) is made in exercise of the powers conferred by Articles 22(1) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.

These Regulations amend Commission Regulation (EC) No 889/2008 , implementing Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. One of the functions of that Regulation is to specify the derogations to organic production rules which are permitted under Article 22 of Regulation (EC) No 834/2007: this may be necessary if organic substances, feed or organically-reared livestock are not available on the market.

The UK Government intends to lay this instrument before Parliament on 6 December 2022.

### **Summary of the proposals**

The purpose of this statutory instrument is to extend the dates until which derogations may be authorised for the introduction of non-organic pullets (young chickens) into organic flocks for egg production, the use of up to 5% non-organic protein feed for pigs and poultry, and the use of non-organic high acyl gellan gum in organic food production.

The derogations relating to pullets and protein feed have been in place since 2008, having been extended several times, and in GB are due to expire on 31 December 2022. However, there is a critical business need to extend these derogations to continue to support businesses, otherwise many organic egg producers and organic food producers will no longer be able to produce organically. This instrument therefore extends these derogations until 1 January 2026.

#### *Non-organic pullets*

Article 42(b) of Commission Regulation (EC) No 889/2008 permits the use of non-organic pullets for egg production up to the age of 18 weeks, when organically reared pullets are unavailable. Regulation 2(2) of this instrument amends Article 42(b) of Regulation (EC) No 889/2008 so as to provide that until 31st December 2025, non-organically reared pullets of not more than 18 weeks may be introduced into an organic flock for egg production when organically reared pullets are not available, subject to conditions.

### *Non-organic protein feed for pigs and poultry*

Article 43 of Regulation 889/2008 permits the use of non-organic protein feed for pigs and poultry until 31 December 2022. Regulation 2(3) of this instrument amends Article 43 of Regulation (EC) No 889/2008 so as to provide that, where farmers are unable to obtain protein feed for porcine and poultry species exclusively from organic production, up to 5% of non-organic protein feed may be used in each period of 12 months for the calendar years 2023, 2024 and 2025.

### *Gellan gum*

Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2023. Regulation 2(4) amends the table in Section A of Annex 8 of Regulation (EC) No 889/2008, which lists food additives which may be used in the processing of organic food, subject to conditions and restrictions. It amends the entry relating to E418, gellan gum, to provide that from 1st January 2026 only organically produced gum, in its high acyl form, may be used in processing organic food.

These Regulations extend to England and Wales and Scotland.

### **Does the SI relate to a common framework or other scheme?**

Yes, the instrument relates to the Organics Framework Outline Agreement that has been finalised and is undergoing Parliamentary scrutiny. The framework is intended to cover the principles and overarching standards for organic production and certification; Official controls, labelling and trade of organic produce; and organic aquaculture.

### **Summary of stakeholder engagement/consultation**

Defra consulted the Scottish and Welsh Administrations carried out targeted consultation of the Scottish and Welsh Administrations via the Four Nations Working Group. The Administrations expressed support for the measures. These amendments to retained Regulation (EC) No 889/2008 will not apply to Northern Ireland.

Defra also carried out targeted consultation of organic control bodies in Great Britain and the UK Organic Certifiers Group. Control bodies expressed support for the measures.

### **A note of other impact assessments (if available)**

An Impact Assessment has not been prepared for this instrument because there is a very low level of impact on businesses: this Statutory Instrument will permit operators to continue using non-organic pullets, up to 5% non-organic protein feed, or non-organic gellan gum, as they have done.

## **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

This instrument is necessary to ensure that derogations are extended to allow specific non-organic alternatives for pullets, protein feed for pigs and poultry and gellan gum if such organic substances, feed or organically-reared livestock are not available on the market.

The current derogations are due to expire and this instrument is intended to extend them further. Defra has worked with the sector to ascertain the need to extend these derogations and their summary is provided below.

As noted in previous advice on proposed regulations to fix deficiencies in the organics legislation (e.g. AG/048 The Organic (Derogations) (Amendment) Regulations 2022), the development of policy on organics has been aligned to date between Defra and the devolved administrations. There are economic and practical benefits to that continuing and the proposed regulations permit a regime on a GB wide basis to address that scenario.

### *Non-organic pullets*

Defra has indicated that in discussions with the British Egg Industry Council, organic Control Bodies and key sector stakeholders, the sector has clear intentions to invest and improve the organic pullet sector. However, this cannot be done without establishing organic pullet standards, or setting a firm date for changes resulting from the review of GB's organic regulations to be implemented. Businesses have noted that due to the land certification requirements (conversion to organic farming takes up to 2 years) and structural changes to poultry houses (i.e., pop-holes to access the outdoor space) a minimum of 3 years would be required. Since there continues to be a shortage of organically reared pullets on the market, this instrument extends the derogation to 31 December 2025.

### *Non-organic protein feed for pigs and poultry*

Article 43 of Regulation 889/2008 permits the use of up to 5% of non-organic protein feed for pigs and poultry until 31 December 2022. A 100% organic diet can put considerable strain on the organic pigs and poultry sectors. The UK is unable to produce a sufficient amount of organic grain of a high enough protein level to meet the nutritional requirements of organic pigs and poultry. The UK therefore imports a large proportion of the grain used to produce organic pig and poultry feed from Russia, Ukraine and Kazakhstan. Pigs and poultry need to have a balanced level of amino acids (protein) to meet their nutritional requirements and keep them healthy. If they do not receive the correct level of protein in their diet, they are forced to look elsewhere for this source. For poultry, this can lead to birds pecking other birds resulting in a high mortality rate within the flock. For pigs, the lack of organically available amino acids can result in an un-balanced diet which places unnecessary stress on their metabolic system. This instrument extends the derogation until 31 December 2025, to allow the organic industry to research and source alternative proteins. This research will feed into a future update of organic legislation.

## *Gellan gum*

Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2023. Since there are still insufficient sources of organic gellan gum available to producers in Great Britain, this instrument extends that derogation until 1 January 2026. Organic operators may face disruption if this derogation is not extended, as they will struggle to source gellan gum in its organic form.

## *Defra review of organic regulations*

Defra are planning a comprehensive review of the retained EU organic regulations with a view to developing a new, more fit for purpose system of GB organic regulations that will address the issues around the derogations. The programme will include formal public consultation. They anticipate it will take a good 18 months to deliver, given the breadth of change and need to consult.

## **Intended laying date (if known) of instruments likely to arise**

Tuesday 6 December 2022.

## **If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers' proposal to consent, why not?**

The Scottish Parliament will have 28 days to scrutinise Scottish Minister's proposal to consent.

## **Information about any time dependency associated with the proposal**

A response by 21 November would ensure Defra can be notified of the result of the Committee's consideration with enough time to allow the SI to be laid on 6 December.

## **Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

None.

## **Any significant financial implications?**

No.